

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-002036

04/17/2012

HONORABLE THOMAS L. LECLAIRE

CLERK OF THE COURT

L. Berger

Deputy

IN RE THE MATTER OF
JAMES B SIMS II

STEPHEN JOHN PRZESLICKE

AND

DENA HARGIS

DENA HARGIS
UP

CHRISTINE M POWELL

CHRISTINE M POWELL

FAMILY COURT SERVICES-CCC

MINUTE ENTRY

Courtroom CCB 501

Prior to the commencement of this proceeding, Petitioner's Exhibits 1 through 12 are marked for identification.

10:18 a.m. This is the time set for Evidentiary Hearing with regard to Respondent's July 28, 2011 Petition to Modify a Support Order; Spousal Maintenance and Petitioner's December 13, 2011 Petition for Modification of Child Support. Petitioner/Father, James B. Sims II, is present with counsel, Stephen John Przeslicke. Respondent/Mother, Dena Hargis, is neither present nor represented by counsel. Best Interests Attorney, Christine M. Powell, is also present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

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Discussion is held with the Court regarding Respondent's Motion to Continue today's proceedings.

Best Interests Attorney, Christine M. Powell, provides a statement to the Court.

Based upon the discussion held and statements presented,

IT IS ORDERED denying Respondent's Motion to Continue.

THE COURT FINDS that it is in the best interests of the minor children for the Court to proceed today to avoid irreparable harm to the minor children. The health, safety, and welfare of the minor children are otherwise in serious and immediate jeopardy, the children are imminently likely to suffer serious physical harm and/or be removed from this state.¹

LET THE RECORD REFLECT today's hearing was set for 10:00 a.m. and it is now 10:35 a.m. and Mother is not present. Mother has contacted this Division to state the reason for her absence was that she recently registered herself in an in-patient treatment program.² The Court finds that if Mother did, in fact, register into an in-patient treatment program, doing so directly before this hearing and not requesting a telephonic appearance is a willful and knowing attempt to avoid today's proceeding. Mother having failed to demonstrate good cause for her failure to appear, the Court will convene and proceed by Default in her absence.

Robert F. Herrmann, Jr. is sworn and testifies.

¹ Three incidents are reported to the Court; 1) Mother and her partner, Jean Maynard, through the fence surrounding the playground, approached the daughter at her school during recess and offered her "medicine." The pair departed off the school area when alerted school officials approached the area; 2) Jean Maynard delivered cupcakes to the school office on the minor son's birthday. School officials noted that the commercial cupcake packaging had been opened and re-taped. After notifying Father, the cupcakes were not distributed to the son's class; and, 3) after leaving his residence with the children, Father returned and found items, mostly Jean Maynard's clothing, strewn across the fence surrounding the house. The children screamed "they're here" and would not leave the vehicle until Father searched the area. Father and the BIA testified that Father's home is remotely located and in a cul-de-sac. The Court is concerned that Mother and/or Jean Maynard had been watching the house in order to be able to determine the appropriate time to place the articles of clothing while Father and the children were away, given the one-way in/one-way out location of the home. Further, the Court is concerned that the placement of the clothing was done, in fact, to create apprehension in Father and/or the minor children.

² The note filed with the incomplete Motion to Continue is purportedly written by a case manager and not a medical doctor. No basis is provided for why Mother could not appear telephonically. Mother has sought last minute continuances in the past. Petitioner testified that Mother has entered treatment facilities in the past to thwart Court proceedings. The Motion to Continue is improper under Rules 30, 31 and 35, *A.R.F.L.P.* Further, the information provided to the Court by Petitioner and the C.A.A. is alarming by its nature, suggesting Mother's conduct is endangering the minor children.

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Petitioner's Exhibit 6 is received in evidence.

The witness is excused.

James B. Sims II is sworn and testifies.

Petitioner's Exhibits 9 and 12 are received in evidence.

Petitioner's Exhibit 13 is marked for identification and received in evidence.

IT IS ORDERED sealing Petitioner's Exhibit 13, not to be opened until further Order of the Court.

Counsel for Petitioner provides a closing statement to the Court.

Best Interests Attorney provides a closing statement to the Court.

Based upon the testimony and evidence presented,

IT IS ORDERED that Respondent's July 28, 2011 Petition to Modify a Support Order: Spousal Maintenance is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's December 13, 2011 Petition for Modification of Child Support is **GRANTED** as set forth below.

IT IS FURTHER ORDERED that Mother shall have **absolutely no contact** with the minor children, **in any manner and at any time**, until further Order of the Court. Mother shall remain, at a very minimum, five hundred (500) feet away from the minor children at all times.

IT IS FURTHER ORDERED directing the minor children's schools to terminate Mother's internet access to school records and Mother's direct contact with the school at all times.

IT IS FURTHER ORDERED that Jean Maynard, who has no legal relationship with the minor children except as Mother's partner, shall have **absolutely no contact** with the minor children, **in any manner and at any time**, until further Order of the Court. Jean Maynard shall remain, at a very minimum, five hundred (500) feet away from the minor children at all times.

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THE COURT FINDS that Mother's allegations to police and Child Protective Services regarding Father's alleged sexual abuse of the minor children appears to be inaccurate and may constitute false reporting. The allegations have been repeatedly asserted by Mother and repeatedly found to be unsubstantiated. Each allegation results in authorities intervening at Petitioner's home, is disruptive, and frightening to the minor children. It has also resulted in having the youngest child examined and re-examined by medical personnel to determine if a sexual assault has occurred. These apparent false allegations simply victimize the minor children, particularly the youngest child.

IT IS RECOMMENDED that the Best Interests Attorney consider whether it is appropriate to seek termination of Mother's parental rights.

IT IS FURTHER ORDERED that Mother may petition this Court for reinstatement of her parenting time only *after* the following requirements have been met:

- Mother undergoes a psychological evaluation with Dr. Brian Yee, Dr. David Weinstock, Dr. Mary Ann Lanzilotta or another examiner approved by the Court upon Motion, and said report is provided to this Court for review.
- The counselor for the minor children provides this Court with a written report and recommendation that reinstatement of Mother's parenting time would be in the minor children's best interests.
- Therapeutic Intervention, assuming it is even therapeutically appropriate to initiate therapeutic intervention, between Mother and the minor children is completed and the Therapeutic Interventionist provides a written report and recommendation to this Court stating that reinstatement of Mother's parenting time would be in the minor children's best interests.

IT IS FURTHER ORDERED that Mother shall refrain from contacting the Best Interests Attorney by way of email and/or telephone contact. Mother is **only** authorized to contact the Best Interests Attorney through her office and by way of written communication utilizing the United States Postal Service.³

THE COURT FINDS it appropriate setting current child support in the amount of \$969.00 per month. Therefore,

IT IS ORDERED that Mother shall pay to Father the sum of **\$969.00 per month** as and for current child support commencing January 1, 2012 and continuing on the same day of each

³ This requirement stems from the information provided by the BIA that Mother is sending communiqués to the BIA throughout the night.

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month thereafter. Said amount is to be paid through the Support Payment Clearinghouse by Order of Assignment.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

Until the wage assignment becomes effective, it is the responsibility of the party obligated to pay support/maintenance to pay the support to **Support Payment Clearinghouse, P. O. Box 52107, Phoenix, Arizona 85072-2107**. The payment should show the case number and/or ATLAS case number and the name of the party paying support and the name of the party who will receive the payment.

If payment is made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within ten (10) days of the change (A.R.S. 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

Obligor is personally responsible for the timely payment of support as well as the \$5.00 monthly handling fee. At any time an employer and/or Obligor are not paying pursuant to the Order of Assignment, Obligor must make timely payment of support and fees directly to the Support Payment Clearinghouse. Failure to make timely payment of support may result in a finding of contempt which may result in sanctions, including incarceration.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel causing them to be marked, or to their written designee. Counsel shall have the right to re-file relevant exhibits as needed in support of any appeal. Re-filed exhibits must be accompanied by a Notice of Re-filing Exhibits and presented to the Exhibits Room of the Clerk's Office. The Court's exhibit tag must remain intact on all re-filed exhibits.

IT IS FURTHER ORDERED that counsel or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form (1)

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11:34 a.m. Matter concludes.

IT IS FURTHER ORDERED signing this minute entry as a formal written Order of the Court, pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/S/ JUDGE THOMAS L. LeCLAIRE

THOMAS L. LeCLAIRE
JUDGE OF THE SUPERIOR COURT

FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.